

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 99 of 2019

1. Shri Narayan Agrawal S/o Late Shri Durga Dutt Aged About 88 Years R/o Ward Number 20, Manendragarh, District Korea, Chhattisgarh.
2. Shri Sanket Kumar Agrawal S/o Shri Basant Kumar Agrawal Aged About 33 Years R/o Ward Number 20, Manendragarh, District Korea, Chhattisgarh.
3. Shri Saket Kumar Agrawal S/o Shri Kailash Kumar Agrawal Aged About 30 Years R/o Ward Number 20, Manendragarh, District Korea, Chhattisgarh.

---- Petitioners

Versus

1. Shri Kishore Agrawal S/o Late Shri Hariprasad Agrawal Aged About 55 Years R/o Ward Number 20, Manendragarh, District Korea, Chhattisgarh.
2. Smt. Sakuntala Devi W/o Hariprasad Agrawal Aged About 77 Years R/o Ward Number 20, Manendragarh, District Korea, Chhattisgarh.

---- Respondents

For the Petitioners	:	Dr. N.K. Shukla, Senior Advocate with Ms. Deepa Jha, Advocate.
For the Respondents	:	Shri Vivek Kumar Agrawal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15.09.2021

Heard.

1. This revision has been brought being aggrieved by the order dated 11.9.2019 passed by the trial Court, dismissing the application of the petitioners, which was filed under Order VII Rule 11 of the CPC.
2. A civil suit was filed by the respondents praying for reliefs of declaration of title and permanent injunction with respect to nazool plot No.3/8 measuring 5082 sq.ft., on the ground that the father of the plaintiffs had purchased this property benami in the name of Savitri Devi on 6.10.1961. The suit is being contested by the petitioners. The

application was moved by the petitioners under Order VII Rule 11 of the CPC on the ground that the suit is not maintainable under the provisions of Benami Transactions (Prohibition) Act, 1988 (for short 'the Act, 1988'), which has been dismissed by the impugned order.

3. It is submitted by Senior Counsel for the petitioners that clearly according to the pleadings of the plaint, the claim of title was made by the respondents on the basis that the suit property was purchased benami in the name of Savitri Devi, however, this claim of the respondents has been challenged by the petitioners. It is pleaded in the plaint itself that Savitri Devi had executed a will dated 3.6.2017 in favour of the petitioners, therefore, the petitioners claimed right on the suit property on this basis. It is submitted that Section 4(1) of the Act, 1988 clearly provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property, therefore, there is a clear prohibition under this Act. Although, there is an exception under Sub-section (3) of Section 4 of the Act, 1988, which is applicable to undivided family, but there is no such pleading in the plaint that Savitri Devi was a coparcener of the Joint Hindu family. After the purchase of the suit property, Savitri Devi continued as the owner all alone and it was not held by her in fiduciary capacity as it is provided under Section 4 (3)(b) of the Act, 1988.
4. Reliance has been placed on the judgment of Supreme Court in the case of **Marcel Martins vs. M. Printer and Ors.**, reported in **2012 AIR SCW 3007**, in which the term fiduciary has been explained according to which, it means that one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to

that of a trustee with respect to the trust and confidence involved in it and the scrupulous good faith and condor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person, trust or estate.

5. It is submitted in the case of **Vishram alias Prasad Govekar and Ors. vs. Sudesh Govekar (D) by Lrs. and Ors.**, reported in **AIR 2017 SC 583**, it was held that such a kind of dispute cannot be drawn into as it is barred under the provisions of Section 4 of the Act, 1988. It is also submitted that in the case of **Saurabh Sharma late Manharan Lal Sharma vs. Bankelal (Died) through LR's**, reported in **AIR Online 2020 Chh 50**, this High Court has clearly held that such a suit for declaration of title on the benami property is totally barred under Section 4(1) of the Act, 1988.

Reliance has also been placed on the judgments of Supreme Court in the case of **Samittri Devi and another vs. Sampuran Singh and another**, reported in **AIR 2011 SC 773** and **Mithilesh Kumar and Another vs. Prem Behari Khare**, reported in **(1989) AIR (SC) 1247**. It is further submitted that this Court has held in the case of **Dukhiya Bai and Anr. vs. Pheruram Verma and Ors**, reported in **2019(2) C.G.L.J. 14**, it was held that a suit filed by the plaintiff claiming the declaration that he is the owner of the suit property under Benami Transaction (Prohibition) Act, 1988 is specifically barred under Section 4(1) of the Act, 1988, therefore, the impugned order is not sustainable. Learned trial Court should have allowed the application under Order VII Rule 11 of the CPC but it has been rejected. Hence, it is prayed that the petition

be allowed and the relief be granted accordingly.

6. Learned counsel for the respondents opposes the submissions and submits that the issue raised by the petitioners/ defendants in their application under Order VII Rule 11 of the CPC is a mixed question of law and fact. The present case is clearly covered by the exception under Section 4(3) of the Act, 1988. The suit property was purchased benami, which is in the name of Savitri Devi for the purposes of holding the same for joint family property. It is submitted that on the reverse page of the sale deed dated 6.10.1961, it is clearly mentioned that the whole amount of consideration was paid by father of Savitri Devi, therefore, the possession of Savitri Devi in holding that property was that of a trustee for the joint family property.
7. Reliance has been placed on the judgment of Supreme Court in the case of **Pawan Kumar vs. Babulal since deceased through Legal Representatives and Others**, reported in **(2019) 4 SCC 367**, in which it was held that when the controversy has arisen on the ground claiming that the holder of property has held the same in fiduciary capacity then such a question must be gone into on the strength of the evidence on record and it cannot be decided at the stage of deciding the application under Order VII Rule 11 of the CPC. Hence, learned trial Court has not committed any error in dismissing the application and the impugned order is sustainable, which needs no interference.
8. Considered on the submissions. The pleadings in the plaint has to be scrutinized again in view of the arguments made by the respondents side. The pleadings in the plaint is that the suit property was purchased in the name of Savitri Devi by her father Hariprasad Agrawal on 6.10.1961, for which the consideration price was paid by late Hariprasad Agrawal. The suit property was in possession of late Hariprasad

Agrawal until his death, therefore, Savitri Devi was a benami holder of the property. There is no such pleading in the plaint that the suit property was purchased for the benefit and improvement of Joint Hindu family property. In fact, there is no mention of the Joint Hindu family property in the whole plaint. Neither there is any mention of Hindu undivided family nor the joint property of such undivided family. In this circumstance, the absence of such pleadings, which are the requirement under sub-section (3) of Section 4 of the Act, 1988, for the maintainability of the suit as an exception to the provision under Section 4(1) of the Act, 1988, is totally missing.

9. The prayer under Order VII Rule 11 of the CPC for rejection of plaint has to be considered only on the basis of the plaint averments and nothing else. The plaint averments as disclosed herein-above clearly shows that nothing has been pleaded to show that the suit property was held by Savitri Devi as coparcener of a Hindu undivided family and the same was for the benefit of all the coparceners of the Joint Hindu family. This being the position on the basis of the facts and pleadings in the plaint, there is no material to draw conclusion that the suit filed by the respondents is covered under the exception as provided under Section 4 (3) of the Act, 1988. This being the conclusion, the suit filed by the respondents appears to be clearly barred under Section 4(1) of the Benami Act, 1988 and in such a case the plaint of the respondents is liable to be rejected under Order VII Rule 11(d) of the CPC.
10. On the basis of the findings given and the conclusions drawn, it is held that the impugned order passed by the learned trial Court is erroneous and unsustainable, therefore, the same is set aside. The application of the petitioners under Order VII Rule 11 of the CPC is allowed. The plaint of the respondents is rejected under Order VII Rule 11 (d) of the

CPC on that basis, the proceeding in the civil suit pending stand terminated.

11. Hence, this revision stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi